

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TORAN V. PETERSON,

Plaintiff,

v.

REID DESROCHERS, et al.,

Defendants.

Case No. 1:19-cv-145

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendants moved for partial summary judgment on the ground that Plaintiff failed to exhaust his excessive-force claim against Defendant Toogood and his claims against Defendant Lake. Defendants conceded that Plaintiff properly exhausted his claim against Defendant Desrochers and his denial-of-soap claim against Defendant Toogood. The matter was referred to the Magistrate Judge who issued a Report and Recommendation (R&R) recommending that this Court deny Defendants' motion for partial summary judgment. The matter is presently before the Court on Defendants' objection to the Report and Recommendation. Additionally, Plaintiff has filed an appeal from a December 23, 2019 pretrial order of the Magistrate Judge. The Court denies the objection, denies the appeal, and issues this Opinion and Order.

I. Defendants' Objection

Defendants argue that the Magistrate Judge erred in recommending denial of their motion where Plaintiff's contention that he was denied Step II grievance forms for ICF-16-03-0283-26a

(excessive-force claim against Defendant Toogood) and ICF-16-03-0286-12e1 (claims against Defendant Lake) rests merely on his “self-serving declaration” (ECF No. 47 at PageID.285-286). Defendants argue that the record instead demonstrates that “the entirety of the grievance process was available to him, that he was able to obtain Step II appeal forms, and that he simply did not pursue Step II appeals for ICF-16-03-0283-26a or ICF-16-03-0286-12e1” (*id.* at PageID.286-287).

In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of the portions of the Report and Recommendation to which Defendants have objected. The Court denies the objection. Defendants’ argument does not reveal any error in the Magistrate Judge’s determination that Plaintiff’s evidence created a genuine dispute of material fact as to whether Plaintiff exhausted his administrative remedies. Summary judgment in favor of the party with the burden of persuasion “is inappropriate when the evidence is susceptible of different interpretations or inferences by the trier of fact.” *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999). Accordingly, this Court adopts the Magistrate Judge’s Report and Recommendation (ECF No. 42) as the Opinion of this Court.

II. Plaintiff’s Appeal

On December 23, 2019, the Magistrate Judge issued an Order (ECF No. 30), which, in pertinent part, granted in part and denied in part Plaintiff’s Motion to Overrule Objection and Compel Discovery (ECF No. 27). This Court will reverse an order of a magistrate judge only where it is shown that the decision is “clearly erroneous or contrary to law.” 28 U.S.C. § 636(b)(1)(A); *see also* FED. R. CIV. P. 72(a); W.D. Mich. LCivR 72.3(a). “‘A finding is ‘clearly erroneous’ when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.’” *United*

States v. Mabry, 518 F.3d 442, 449 (6th Cir. 2008) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

Plaintiff's motion to compel pertained to both his exhaustion discovery requests and his non-exhaustion "Regular Interrogatories to Reid Desrochers" (ECF No. 26-1). The Magistrate Judge declined to consider the regular interrogatories at this juncture in the litigation, pointing out that discovery was then "limited to the exhaustion issue only" (ECF No. 30 at PageID.226, quoting CMO, ECF No. 15 at PageID.61). The Magistrate Judge carefully considered each of Plaintiff's exhaustion discovery requests. In his appeal from the Order, Plaintiff challenges the Magistrate Judge's resolution of both sets of discovery requests. To the extent that the issue has not been rendered moot by this Court's adoption of the Magistrate Judge's recommendation to deny Defendants' motion for partial summary judgment, Plaintiff's appeal is properly denied for lack of merit. Plaintiff's appeal demonstrates only his disagreement with the Magistrate Judge's resolutions, not that the Order was either clearly erroneous or contrary to law.

Therefore:

IT IS HEREBY ORDERED that Defendants' Objection (ECF No. 47) is DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 42) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendants' Motion for Partial Summary Judgment Based on Failure to Exhaust (ECF No. 17) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Appeal (ECF No. 40) from the Magistrate Judge's Order (ECF No. 30) is DENIED.

Dated: April 24, 2020

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge